

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF LOUISIANA

IN RE

**CRUTCHER-TUFTS RESOURCES, INC.,  
DEBTOR**

BANKRUPTCY NO.  
**03-17408**

**CHAPTER 11**

**SECTION "B"**

---

IN RE

**CRUTCHER-TUFTS RESOURCES, L.P.,  
DEBTORS**

BANKRUPTCY NO.  
**03-17409**

**CHAPTER 11**

**SECTION "B"**  
**(Jointly Administered)**

---

**BNP PARIBAS f/k/a BANQUE PARIBAS,  
INDIVIDUALLY AND AS AGENT FOR  
DEN NORSKE BANK ASA, NORDEA  
BANK NORGE ASA – GRAND CAYMAN  
BRANCH f/k/a/ CHRISTIANIA  
BANK OG KREDITKASSE ASA  
and FORTIS CAPITAL CORP.,  
PLAINTIFFS,**

**v.**

**EDWIN C. JAMES, REXONAD  
BEAUFORT, INC. and  
CRUTCHER-TUFTS RESOURCES, INC.,  
DEFENDANTS.**

**ADVERSARY NO.  
03-01224**

Consolidated with

---

**BNP PARIBAS f/k/a BANQUE PARIBAS,  
INDIVIDUALLY AND AS AGENT FOR  
DEN NORSKE BANK ASA, NORDEA  
BANK NORGE ASA – GRAND CAYMAN  
BRANCH f/k/a CHRISTIANIA BANK OG  
KREDITKASSE ASA and  
FORTIS CAPITAL CORP.,  
PLAINTIFFS**

**v.**

**EDWIN C. JAMES, REXONAD  
BEAUFORT, INC. AND CRUTCHER-  
TUFTS RESOURCES, L.P.,  
DEFENDANTS**

**ADVERSARY NO.  
03-01225**

## **MEMORANDUM OPINION**

This matter came before the court on a motion for abstention filed under 28 U.S.C. §1334 by the defendants, Edwin C. James (“James”), and Rexionad Beaufort, Inc. (collectively “the defendants”). Opposition to this motion was filed by the debtor, Crutcher-Tufts Resources, Inc. and Crutcher Tufts Resources, L.P (“the debtors”). The underlying adversary proceedings at issue were commenced by complaints for declaratory judgment, substantive consolidation, and related relief filed by Banque Paribas, individually and as agent for Den Norske Bank ASA, Nordea BankNorge ASA and Fortis Capital Corp. (“the junior lenders”). A hearing on the motion was held, at which time the court heard the statements of counsel. Upon consideration of the statements made, the memoranda submitted, and the applicable law, the court will deny the motion for abstention, but hold the adversary proceedings in abeyance for the reasons hereinafter stated.

### **I. FACTS**

A petition for an involuntary Chapter 11 was filed on September 25, 2003, and an order for relief was entered on October 10, 2003. On October 1, 2003, the Junior Lenders initiated two adversary proceedings by the filing of complaints for declaratory judgment, substantive consolidation, and related relief in the bankruptcy cases of Crutcher-Tufts Resources, Inc. and Crutcher Tufts Resources, L.P. The adversary proceedings were consolidated by order entered October 30, 2003. In each of the adversary proceedings, the junior lenders are named as plaintiffs, and request declaratory relief under 11 U.S.C. 105(a), 363(h), 502 and 510(c) against James, and his corporation, Rexionad Beaufort, Inc., as well as the debtors.<sup>1</sup> Each complaint states that an

---

<sup>1</sup> Complaint, at para. 32.

actual controversy exists between plaintiffs and defendants, as to (1) the existence of an alleged joint venture, (2) the validity, extent and priority of James's and Rexionad's claims and interests; and (3) the ability of the petitioning creditors and/or the debtors to sell certain collateral free and clear of James and Rexionad's claims and interests. Among other things, the complaint requests that a judgment be entered (1) declaring that no joint venture exists between James, Rexionad and the debtors for the acquisition or operation of the collateral; (2) if a joint venture is found, that the judgment be in the junior lenders' favor for the amount of the junior lenders' notes; (3) that the court substantively consolidate the alleged joint venture with the debtors, and order the dissolution and liquidation of the alleged joint venture; (4) declaring that James and Rexionad lack a lien, writ or legally cognizable interest encumbering the collateral and declaring that specific performance and constructive trust are not available to them; (5) granting equitable subordination of the defendants' claims and interests to the plaintiffs' liens and mortgages and (6) requesting sale of the collateral free and clear of liens and interests under 363(h).

The debtors have answered the junior lenders' complaints, and assert a cross claim against James and Rexionad (1) that they be held liable, *in solido*, for amounts found to be owing to the junior lenders and (2) that they also be held liable for their pro rata share of the acquisition, development and production costs of the collateral.

Both James and his closely held corporation, Rexionad, requested that this court abstain from hearing the consolidated adversary proceedings. They assert that the adversary proceedings involve the same subject as a suit pending in the California court involving James, Rexionad and the debtors. The California lawsuit was initiated in 1998 by James and Rexionad against the debtors, as well as several related entities including Crutcher-Tufts Production Company,

Crutcher-Tufts Corporation, J. David Tufts, III , Albert B. Crutcher , Jr. and DOES 1 through 50. The Fourth Amended Complaint in the California litigation is styled as one for breach of contract, breach of fiduciary duty, breach of confidence, imposition of constructive trust, dissolution of partnership and for an accounting.<sup>2</sup>

In conjunction with the motion to abstain, James and Rexionad filed in the bankruptcy court proceedings a motion for relief from the automatic stay, requesting that the automatic stay be lifted to permit the California litigation to proceed against the debtors. After a hearing on the motion, the court entered an order granting the motion for relief from the stay, and permitting the California litigation to proceed. Subsequently, the parties to the California litigation have represented to the court that a twenty day jury trial has been scheduled to commence in the action on April 4, 2005.

On August 6, 2004, the debtors and junior lenders filed a Joint Motion for Approval of Settlement in the jointly administered bankruptcy cases. The court approved the settlement, and an order granting the joint motion for approval of settlement was entered on September 1, 2004.<sup>3</sup> The settlement motion provides generally for the payment of the junior lenders claims from the sale proceeds of the Phase I and Phase II properties, and for release of claims, but specifically provides that the junior lenders “do not release any entity or person claiming an equity or partnership interest in the Debtors.”<sup>4</sup> The Settlement Agreement provides that the junior lenders

---

<sup>2</sup> Pleading 334, Exhibit A.

<sup>3</sup> Pleading 589 .

<sup>4</sup> Pleading 589, para. 11.

be dismissed from this consolidated adversary proceeding<sup>5</sup> and that the only action to be taken by either Trevor G. Bryan<sup>6</sup> (the “Responsible Party”) or the junior lenders is “such action . . . as may be necessary to prosecute the cross claim asserted by the Responsible Party or to respond to pleadings filed by Edwin James or Rexionad Beaufort.”<sup>7</sup>

## **II. ANALYSIS**

The motion for abstention asks the court to abstain under 28 U.S.C. §§1334(c)(1) and (2) from conducting the consolidated adversary proceedings.<sup>8</sup> The debtors oppose the motion for abstention, asserting that while the California litigation is similar to the adversary proceedings, that much of the relief sought in the adversary proceedings is unavailable in the California litigation, including core bankruptcy functions regarding the restructuring of debtor-creditor relations, as stated in a cross claim made by the debtors to tax the cost of the acquisition and development of the collateral and the indebtedness to creditors to James and Rexionad, should a joint venture be determined to exist.

### **A. Mandatory abstention.**

Section 1334(c)(2) governs mandatory abstention, and states that:

---

<sup>5</sup> Settlement Agreement, para. IV(2).

<sup>6</sup> Mr. Bryan is the duly appointed responsible party for the Debtors.

<sup>7</sup> *Id.* at para. IV(1).

<sup>8</sup> The court has jurisdiction over this matter under 28 U.S.C. § 1334(b) and § 157(b)(2)(A)

“[u]pon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.”<sup>9</sup>

Under §1334(c)(2), “in ‘non-core’ proceedings, courts must abstain from hearing a state law claim for which there is not an independent basis for federal jurisdiction other than §1334(b) ‘if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.’”<sup>10</sup> The moving party must prove the existence of each element requiring abstention by a preponderance of the evidence.<sup>11</sup> Abstention is denied where the moving party fails to prove any one of the statutory requirements.<sup>12</sup>

The court notes that the settlement between the junior lenders and the debtors calls for the dismissal of the junior lenders from these proceedings. Additionally, upon payment of the junior lenders claims, many causes of action originally asserted by the junior lenders will essentially become moot. The original complaints filed in the adversary proceedings unquestionably raises state law issues, however, they also raise issues over which this court has core jurisdiction. Among other things, the adversary proceedings request substantive consolidation, the sale of the debtors’ property pursuant to 11 U.S.C. §363, and the determination of claims against the estate. These are core bankruptcy matters. Significantly, 28 USC §157(b)(2)(N) states that core matters

---

<sup>9</sup> 28 USC 1334(c)(2).

<sup>10</sup> *In re Lorax Corp.*, 295 B.R. 83, 90 (Bankr. N.D.Tex. 2003), *citing In re Gober*, 100 F.3d 1195, 1206 (5<sup>th</sup> Cir. 1996).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*, *citing In re WorldCom Secs. Litig.*, 293 B.R. 308, 331 (S.D.N.Y. 2003).

include “orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate.” Similarly, 28 USC §157(b)(2)(B), (C) states that core matters include “allowance or disallowance of claims against the estate. . . “ and “counterclaims by the estate against persons filing claims against the estate.” James and Rexionad have filed claims in the bankruptcy cases, and have arguably submitted themselves to the core jurisdiction of this court.<sup>13</sup>

The cross claim made by the debtors against James and Rexionad to tax the costs of acquisition and development of the collateral and the indebtedness of the junior lenders, should a joint venture be determined to exist, involves a determination of debtor/creditor relations and the claim of James and Rexionad. Although the California litigation and the adversary proceedings are similar, they are not the same. The adversary proceedings raises issues separate and distinct from those appearing in the state court suit. In other words, the California litigation will not timely adjudicate all of the issues raised in the adversary proceedings. As such, mandatory abstention is inappropriate.

#### **B. Discretionary abstention.**

Discretionary abstention is permitted “in the interest of justice, or in the interest of comity with [s]tate courts.”<sup>14</sup> “[T]he considerations underlying discretionary abstention and remand are

---

<sup>13</sup> *Katchen v. Landy*, 382 U.S. 323, 86 S.Ct. 467, 15 L.Ed.2d 391 (1966); *In re Baudoin*, 981 F.2d 736 (5<sup>th</sup> Cir. 1993); *see also In re S.G. Phillips Constructors, Inc*, 45 F.3d 702, 707 (2<sup>nd</sup> Cir. 1995)(by filing claim, creditor triggered 157(b)(2)(B) subject matter jurisdiction and submitted to the court’s equitable power to resolve its claims).

<sup>14</sup> 28 U.S.C. 1334(c)(1).

the same.”<sup>15</sup> The Eastern District has outlined various factors to consider for discretionary abstention/remand, which include: “(1) forum non conveniens; (2) bifurcation of the civil action; (3) centralization of the entire action in one court; (4) expertise of the particular court; (5) duplicative or wasteful use of judicial resources; (6) prejudice to involuntarily removed parties; (7) comity issues; and (8) a diminished likelihood of inconsistent results.”<sup>16</sup> Additionally, courts should consider the factors for mandatory abstention in determining discretionary abstention/remand.<sup>17</sup> These factors include: “(1) the motion...must be made timely; (2) the claim must be based on state law and is only ‘related to’ the case under title 11; (3) the claim could not have been brought in federal court, absent the court's bankruptcy jurisdiction; and (4) the court finds that timely adjudication of the claim can occur in state court.”<sup>18</sup>

Applying the above mentioned factors, the court must find that the factors lean towards denial of discretionary abstention. The first two factors, forum non conveniens and bifurcation of the civil action are not relevant here. Factors three and five do not favor abstention. Abstention will not centralize all the issues in one court. Additionally, because the actions are not identical, abstention will not result in the duplication of judicial resources. Factor four favors abstention, because the California court is certainly better able to decide issues involving California contract or joint venture law. Comity issues, prejudice, and the likelihood of inconsistent results are not applicable here. In sum, the Court finds that abstention is not warranted.

---

<sup>15</sup> *Borne v. New Orleans Health Care, Inc.*, 116 B.R. 487, 494 (E.D. La. 1990).

<sup>16</sup> *KSJ Dev. Co. of Louisiana v. Lambert*, 223 B.R. 677, 679 (E.D. La. 1998).

<sup>17</sup> *Lambert*, 223 B.R. at 679.

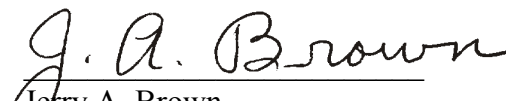
<sup>18</sup> *Id.*, at 679-680, citing *O'Rourke v. Cairns*, 129 B.R. 87, 90 (E.D. La. 1991).



Because there is overlap between the issues in the California litigation and the adversary proceedings, and the California litigation has now been scheduled for trial<sup>19</sup>, the court will hold in abeyance all matters in the adversary proceedings pending a determination of the issues in the California litigation. This court is willing to wait to see the outcome of the trial in the California litigation for several reasons: (1) The California court is the proper forum to try the main issue – whether James and Beaufort have an interest in the California mineral interest. (2) The adversary proceedings are now not in the proper procedural alignment for an adversarial trial. Because the junior lenders have settled there is no party plaintiff. Either the parties will have to be realigned or only the cross claim of the debtors against the defendants would be ready for trial; (3) The debtors probably could not proceed with the reorganization plan and at the same time get ready to try the adversary proceedings here before the scheduled California trial in April, 2005. Therefore, the defendants’ motion for abstention will be denied. Because of the prior modification of the automatic stay, this denial of abstention has no effect on the trial now scheduled for April 2005 in California.

An appropriate Order will be entered.

New Orleans, Louisiana, October 6, 2004.

  
Jerry A. Brown  
U.S. Bankruptcy Judge

---

<sup>19</sup> As previously pointed out, supra p. 4, this court has already modified the automatic stay to permit the California suit to proceed to trial.